

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

PEDRO ROSSELLO, et al.,

Plaintiffs,

v.

BROWN & WILLIAMSON, et al.,

Defendants

CIVIL CASE NO. 97-1910 (JAF)

**DEFENDANT OPMS' THIRD SUBMISSION OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF MOTION TO ENFORCE THE ARBITRATION
PROVISIONS OF THE MSA AND COMPEL ARBITRATION**

TO THE HONORABLE COURT:

COME NOW Philip Morris USA Inc., R.J. Reynolds Tobacco Company and Lorillard Tobacco Company (the "OPMs"), through their undersigned counsel, and respectfully submit an additional decision in support of their "Motion to Enforce the Arbitration Provisions of the Master Settlement Agreement and Compel Arbitration." (Docket Nos. 262, 263.)

On August 8, 2006 the Illinois MSA Court issued an order granting the OPMs motion to compel arbitration and stayed the case pending the outcome of that arbitration. The State filed a motion for interlocutory appeal; and, on March 30, 2007 the Illinois Appellate Court issued an opinion affirming the original order compelling arbitration. *See Illinois v. Lorillard Tobacco Co.*, No. 1-06-2326, --- N.E.2d ----, 2007 WL 958653 (Ill. Ct. App. Mar. 30, 2007).¹ The Illinois Appellate Court's decision, which is offered as supplemental authority, held that "the clear language of the arbitration provision shows that the parties intended to arbitrate the present dispute." 2007 WL 958653, at *5.

¹ Attached as Exhibit 1.

The Illinois Appellate Court stated that “regardless of whether the Arbitration Provision is characterized as ‘broad’ or ‘narrow,’ the plain and unambiguous language of the Arbitration Provision requires arbitration of the present dispute.” 2007 WL 958653, at *5. The Court declared that “[t]he determination that the NPM Adjustment should not apply clearly falls within the language of the Arbitration Provision ... [and] [e]ven if the present dispute does not involve a direct challenge to a determination made by the Independent Auditor, the dispute would still be subject to mandatory arbitration because the MSA provides that all disputes “arising out of or relating to’ such determinations must be arbitrated.” 2007 WL 958653, at *6 (internal citation omitted).

The Court further stated that “by the plain language of the MSA, the “application of any of the adjustments” constitutes a dispute that arises out of or relates to the Independent Auditors determinations or calculations, and is, therefore, subject to arbitration.” 2007 WL 958653, at *6 (internal citations omitted). In addition, the Illinois Appellate Court emphasized that “[w]hile not essential to the disposition of this case, we agree with the [Primary Manufacturers] that the structure of the MSA’s payment provisions compels arbitration.” 2007 WL 958653, at *7.

With this decision, MSA and appellate courts in 42 states have compelled arbitration of this dispute, and orders compelling arbitration are now final and/or non-appealable in at least seventeen jurisdictions: Alaska, Arkansas, California, Colorado, the District of Columbia, Hawaii, Idaho, Iowa, Missouri, Nevada, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia, and Wyoming.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 16th day of April, 2007.

/s/ Salvador Antonetti-Zequeira

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice to the following: Benjamin Acosta, Jr., Francisco A. Besosa, Edgardo Cartagena Santiago, Jose A. Fuentes Agostini, William A. Graffam, Manuel A. Guzman Rodriguez, Paul H. Hulsey, Juan A. Ramos Diaz, Hector Reichard Jr., Vicente Santori Coll, Francisco M. Troncoso, Richard Schell Asad, Eric A. Tulla. Notice will be served by regular mail to the following non registered attorneys:

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